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Paper 108  
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UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

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Patent Interference 105,685 McK  
Technology Center 1600

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**WYETH**

(Named inventors: Anthony F. Hadfield, Syed M. Shah,  
James A. Provost, Aeri Park, Rex A. Shipplett,  
Brenton W. Russell, and Beat T. Weber),  
Patents 6,673,838 B2 and 7,291,347 B2,

Junior Party,

v.

**SEPRACOR, INC.**

(Named inventors: Thomas P. Jerussi, Chrisantha H. Senanayake,  
and Nandkumar N. Bhongle)  
Applications 10/720,134, 11/091,518 and 12/011,083,

Senior Party.

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Before: Fred E. McKelvey, *Senior Administrative Patent Judge*.

**SECOND REDECLARATION OF INTERFERENCE**

In order to conform the interference to the various decisions on  
motions, the interference is redeclared as follows.

1. Sepracor is made senior party and Wyeth is made junior party.
2. In filing future papers, the parties should use the heading set out  
above.



1                   Jerussi:       Application 09/527,442,  
2                                    filed 17 March 2000  
3  
4                                    Application 10/720,134  
5                                    filed 25 November 2003  
6  
7                                    Provisional application 60/127,938,  
8                                    filed 6 April 1999  
9  
10                                  Provisional application 60/167,906  
11                                  filed 30 November 1999  
12       4. Count 6 remains as follows:  
13                                    Count 6  
14                                  An oral dosage form comprising O-desmethyl  
15                                  venlafaxine succinate, wherein the oral dosage form is a tablet  
16                                  or capsule.  
17       The claims of the parties are:  
18                   Jerussi '083:       60-63  
19                   Hadfield '347:     1-9  
20       The claims that correspond to Count 6 are:  
21                   Jerussi '083:       60-63  
22                   Hadfield '347:     1-9  
23       The claims that do not correspond to Count 6 are:  
24                   Jerussi '083:       None  
25                   Hadfield '347:     None  
26       With respect to Count 6, the parties are accorded an earlier  
27       constructive reduction to practice (*i.e.*, benefit for the purpose of priority) of  
28       the following applications:

1 Hadfield: Provisional application 60/268,214  
2 filed 12 February 2001

3  
4 Provisional application 60/297,963  
5 filed 13 June 2001

6  
7 Jerussi: Application 09/527,442,  
8 filed 17 March 2000

9  
10 Application 10/720,134  
11 filed 25 November 2003

12  
13 Provisional application 60/127,938,  
14 filed 6 April 1999

15  
16 Provisional application 60/167,906  
17 filed 30 November 1999

18 5. Count 7 remains as follows:

19 Count 7

20 The composition of claims 23, 25 or 26 of

21 Hadfield U.S. Patent **6,673,838 B2**

22 or

23 the composition of claims 1 or 64 of Jerussi application **11/091,518**

24 or

25 the composition and dosage form claims 63-65 of

26 Jerussi application **10/720,134**.

27  
28 Hadfield claim 23 reads:

29 A pharmaceutical composition comprising O-desmethyl  
30 venlafaxine succinate and a pharmaceutically acceptable carrier  
31 or excipient.

1 Hadfield claim 25 reads:

2 A pharmaceutical dosage form comprising a therapeutically  
3 effective amount of O-desmethyl venlafaxine succinate and a  
4 pharmaceutically acceptable carrier or excipient.

5 Hadfield claim 26 reads:

6 An oral dosage form comprising a therapeutically effective  
7 amount of O-desmethyl venlafaxine succinate and a  
8 pharmaceutically acceptable carrier or excipient.

9 Jerussi claim 1 of application 11/091,518 reads:

10 A pharmaceutical composition which comprises  
11 (±)-O-desmethylvenlafaxine succinate and a pharmaceutically  
12 acceptable carrier or excipient, wherein (±)-O-  
13 desmethylvenlafaxine is present at an amount of about 50 mg.

14 Jerussi claim 64 of application 11/091,518 reads:

15  
16 A pharmaceutical composition which comprises  
17 (±)-O-desmethylvenlafaxine succinate and a pharmaceutically  
18 acceptable carrier or excipient, wherein (±)-O-  
19 desmethylvenlafaxine is present at an amount of about 100 mg.

20 Jerussi claim 63 of application 10/720,134 reads:

21  
22 A pharmaceutical composition comprising a therapeutically  
23 effective amount of O-desmethylvenlafaxine succinate and a  
24 pharmaceutically acceptable carrier or excipient.

1 Jerussi claim 64 of application 10/720,134 reads:

2  
3 A pharmaceutical dosage form comprising a therapeutically  
4 effective amount of O-desmethylvenlafaxine succinate and a  
5 pharmaceutically acceptable carrier or excipient.

6 Jerussi claim 65 of application 10/720,134 reads:

7  
8 An oral dosage form comprising a therapeutically effective  
9 amount of O-desmethylvenlafaxine succinate and a  
10 pharmaceutically acceptable carrier or excipient.

11  
12 The claims of the parties are:

13 Hadfield '838: 1-46  
14 Jerussi '518: 1, 12 and 60-69  
15 Jerussi '134: 60-71

16 The claims that correspond to Count 7 are:

17 Hadfield '838: 23-34 and 46  
18 Jerussi '518: 1, 12 and 60-69  
19 Jerussi '134: 63-71

20 The claims that do not correspond to Count 7 are:

21 Hadfield '838: 1-22 and 35-45  
22 Jerussi '518: None  
23 Jerussi '134: 60-62

24 With respect to Count 7, the parties are accorded an earlier  
25 constructive reduction to practice (*i.e.*, benefit for the purpose of priority) of  
26 the following applications:

27 Hadfield: Provisional application 60/268,214  
28 filed 12 February 2001  
29

1		Provisional application 60/297,963
2		filed 13 June 2001
3		
4	Jerussi:	Application 09/527,442,
5		filed 17 March 2000
6		
7		Application 10/720,134
8		filed 25 November 2003
9		
10		Provisional application 60/127,938,
11		filed 6 April 1999
12		
13		Provisional application 60/167,906
14		filed 30 November 1999

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